

March 11, 2015

TO: Judiciary Committee  
FROM: Rachel Judd and Melissa Legge  
ON BEHALF OF: The Yale Temporary Restraining Order Project  
RE: S.B. 650

Dear Senator Coleman, Representative Tong, and Members of the Judiciary Committee,

We are Rachel Judd and Melissa Legge, law students at Yale Law School and Co-Directors of the Temporary Restraining Order Project, a student-run organization at Yale Law School. We are testifying **in support of Senate Bill 650**. Our testimony does not reflect the opinion, if any, of Yale University.

Senate Bill 650 would protect survivors of domestic violence and other family-based violence by improving the restraining order service process, so that procedural hurdles do not prevent applicants from obtaining the legal protection they desperately need. Effective service is crucial for two reasons: First, if service is not made, the judge will not extend a restraining order beyond the initial 14 day period. Second, a respondent is not subject to criminal sanctions for violating a restraining order unless he or she has received proper notice of the existence of the order.

### **About the Temporary Restraining Order Project**

The Temporary Restraining Order Project (“TRO Project”) is a field placement program in which law students provide resources and assistance to domestic violence victims applying for Temporary Restraining Orders (TROs) in the New Haven Family Court. The program aims to increase access to justice for self-represented parties by providing essential services to TRO applicants as well as to the New Haven J.D. Courthouse. For the last thirty academic years, our volunteers have assisted applicants by helping them fill out the application forms, filing applications with the clerks’ office, helping applicants obtain service, and troubleshooting service problems. We work under the supervision of Yale Law School clinical faculty, attorneys at New Haven Legal Assistance Association, and the Clerks’ Office of the New Haven Judicial District. Quinnipiac University law students also provide these services in a similar program at the New Haven Courthouse.

### **New Haven Service of Process Findings**

Several years ago, TRO Project volunteers began noticing an alarming trend. Frequently, applicants were returning to the office to seek a new order of protection when the first was denied for lack of service. Because no one kept data on the outcome of TRO applications, the exact scope of the problem was not clear.

One TRO Project Director decided to try to find out. Using a handwritten logbook kept by the New Haven Family Court Clerks’ Office, the director calculated the actual rates of effective service in the county for the prior year, Oct. 1, 2010 through Sept. 30, 2011, the only data

available at that time. In that period, 992 orders, including both TROs and hearing orders (HOs), were granted in New Haven. Of the orders picked up by the applicant, nearly half (45.3%) were never served, and another 7.5% were served abode, which many judges consider to be insufficient service. **Only 43.3% of the orders granted that year were successfully served in hand.** Problems with service seem to particularly plague pro se applicants, even those who file through our office, where volunteers aim to help our applicants obtain service by ensuring that the respondent profile form is complete to the extent of the applicant's knowledge, apprising them of procedures to connect with the marshals, and following up to troubleshoot service problems if they arise.

Lack of service is a significant problem. A judge may only grant a TRO where he or she agrees that there is an “imminent threat of danger or physical harm.” It means that nearly 60% of applicants for whom a judge orders some protective measures, either an ex-parte temporary restraining order or a hearing for a more permanent restraining order, do not receive any protection by those measures. In fall 2012, after round table discussions with judges, clerks, marshals, members of the State Marshal Commission, attorneys, and victims’ advocates, some steps were taken to try to resolve the problem at the local level. After a year of these efforts, we looked again at the service data. **Only 44.2% of the orders granted in October 2013 were served in hand. Although this reveals a small improvement, it also suggests that local level adjustments are not enough.**

While data from other courthouses is not available, evidence suggests that this problem is not unique to New Haven. To our knowledge, no other courthouse in the state tracks this data or keeps such a logbook. However, after talking with us, one clerk in Bridgeport calculated service rates in his judicial district for a short period. He discovered that, at best, 61.2% were served in hand, and that is only if no orders were served abode or via certified mail. These numbers – only slightly better than the numbers in New Haven – indicate that applicants across Connecticut experience the same underlying problems with service of TROs. However, because more data collection is necessary to understand the situation across the state, **we urge Connecticut to begin collecting and analyzing data on the service and extension of temporary restraining orders statewide.**

	New Haven 10/10-9/11	New Haven 10/13	Bridgeport 12/1/13- 1/10/14
Total number TRO applications	1210	115	65
Number of TROs not granted*	126	8	16
Number of TROs granted and picked up	992	104	49**
Number not served	449	42	19
<b>% not served (as % of TROs granted and picked up)</b>	<b>45.3%</b>	<b>40.4%</b>	<b>38.8%</b>
Number served abode	74	16	

\* For the purpose of this chart, HOs are treated as TROs.

\*\* Data provided was “number of cases requiring service,” so this was treated as TROs granted and picked up.

## **Potential Reasons for Failure of Service**

Without collecting that data, we cannot say with certainty what causes service to fail so often. However, anecdotal information collected from frequent conversations with applicants and marshals offers valuable insight.

Volunteers in our office follow up with applicants to ensure that their orders are served and that they make it to the hearing. Our volunteers often hear that applicants struggle to connect with marshals. Marshals are only available at the courthouse during limited time windows, 12:30 to 1 and 4:30 to 5 daily. Many applicants receive their order at a different point during the day, often after having spent 2-6 hours at the courthouse filing their applications. Applicants with a job or childcare duties may not be able to wait until the next marshal shift. If they contact the marshals to arrange another time to meet up, they are often told that they must go to the courthouse; only the marshal on duty will serve the order. When they do return during the assigned shift, many applicants tell us that they could not find the marshal, and they had to go back yet again.

All these barriers can also create delays in getting the orders to the marshals. This can shorten the already small window for effective service (generally 7 to 9 days) substantially. Taking weekends into consideration, already busy marshals are sometimes left with only a day or two to effectuate service. We've heard from many applicants that sometimes they just don't get to it in time. **Allowing applicants who attend the initial hearing date and who are pursuing service to get an extension instead of requiring them to start the lengthy process all over again would greatly reduce the burden on them and increase the likelihood of success.**

Another problem arises when the respondent is not home when the marshal arrives. Marshals are only reimbursed for the cost of one trip to the respondent, and their small stipend is not increased relative to how many tries it takes to find a respondent. Marshals must either bear this extra cost themselves or give up after one attempt. Giving up usually means either telling the applicant to come collect the orders and try another marshal or attempting abode service. This may explain the increase in abode service in New Haven. During the initial year-long study, less than one-third of orders served abode were extended, suggesting that judges do not generally accept abode service as sufficient. Currently, when orders are served abode, applicants cannot even attempt service with another marshal and the order likely lapses at the 14-day hearing. **In recognition of all of these barriers, the state should broaden options for service of process.**

## **Summary of Recommendations for Legislative Action**

The Temporary Restraining Order Project supports Senate Bill No. 650 and its proposed improvements to temporary restraining orders. In particular, the following elements of the proposed bill are critical reforms, which will provide greater protections to Temporary Restraining Order Applicants:

- **Part (1), requiring a sworn police officer to serve TROs when the applicant has indicated that the respondent possesses a firearm, in conjunction with Part (5), providing for confiscation of firearms and ammunition at the temporary restraining order stage.** This change will provide a safer method of service and earlier collection of firearms in the most dangerous cases.

- **Part (2), allowing for court extensions of temporary restraining orders** if the applicant is present for the hearing and the TRO was not served. For applicants who wish to continue seeking TRO protections, this will provide much-needed additional time to locate the respondent. Currently, applicants in this situation must begin the application process over again completely, so this change will save both applicants and the courts significant time and resources.
- **Part (3), increasing access to domestic violence advocates.** At the New Haven J.D. Courthouse, the Temporary Restraining Order Project provides critical services to people experiencing domestic violence and much needed assistance with the application process. Applicants in courthouses across the state should have access to the same assistance.
- **Part (4), broadening methods of service.** Additional options for service will increase the likelihood of successful service of process.

In addition, we urge the Senate Judiciary Committee to consider the following changes to the proposed bill:

- **The bill should require that the Judicial Branch collect data** on service of temporary restraining orders, as such data was essential to discovering and understanding problems with TROs. Data collection efforts should capture, at minimum: the number of TROs or hearing orders granted, the number of TROs picked up by applicants, the number of TROs given to marshals for service, the number of service attempts, and the number of TROs ultimately served.
- **The bill should require that marshals and law enforcement notify the COLLECT / Protective Order Registry when a TRO has been successfully served**, which will then notify an applicant who elects to receive notifications through the CT SAVIN victim notification system. Timely notification of service is critical for applicants, as the protections of a TRO do not go into effect until service is complete, and this may affect applicants' safety planning.
- **The bill should provide *any* applicant with the *option* of service by a sworn police officer**, rather than requiring service by police officers for a subset of temporary restraining orders. This will provide domestic violence victims with a critical backup option in cases where marshals are unable or unwilling to serve the TRO, or where service might be dangerous. However, police service should not be required, in case the applicant prefers not to involve the police in the dispute.
- **Additional methods that broaden the opportunities for service, consistent with due process requirements, should be enumerated in the final bill under Part (4) in order to create more flexibility for applicants seeking to effectuate service.** The bill should also permit service using a faxed or scanned copy of the temporary restraining order, rather than requiring an original order.

## **Conclusion**

Thank you for the opportunity to testify on behalf of this bill. If you have additional questions or comments regarding the Temporary Restraining Order Project, we may be reached at [rachel.judd@yale.edu](mailto:rachel.judd@yale.edu) and [melissa.legge@yale.edu](mailto:melissa.legge@yale.edu).